

SCOTT COUNTY BROADCASTING, INC.  
10 TRINITY PLACE  
FORT THOMAS, KY. 41075  
606-781-5715

October 18, 1995

DOCKET FILE COPY ORIGINAL

Mr. William Canton  
Acting Secretary  
Federal Communications Commission  
1919 M Street N.W.  
Washington, D.C. 20554

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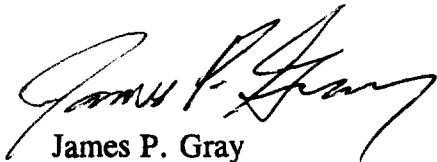
OCT 19 1995

FCC MAIL ROOM

Dear Mr. Canton:

Enclosed is an original and four copies of a MOTION TO ACCEPT & OPPOSITION TO  
SUPPLEMENT and STATEMENT FOR THE RECORD filed by Scott County Broadcasting,  
Inc. in Docket MM 95-28 Channel 241A, Stamping Ground, Kentucky

Sincerely,



James P. Gray  
President, Scott County Broadcasting, Inc.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re:

Amendment of Section 73.202(b)  
of the Commission's Rules,  
Table of Allotments, FM  
Broadcast Station (Stamping Ground, Ky.)

)  
) MM Docket No. 95-28  
)  
) RM-8593  
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OCT 19 1995

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To: The Commission

MOTION TO ACCEPT  
OPPOSITION TO SUPPLEMENT and STATEMENT FOR THE RECORD

Scott County Broadcasting, Inc. ("Scott County") hereby requests leave to file a supplement to its reply comments of May 9, 1995, currently pending in this proceeding. The attached supplement is necessary so that Scott County can reply to Comments by Mortenson Broadcasting Company ("Mortenson") which were filed three and one half months after the close of the Comment and Reply periods specified in the Notice of Proposed Rule Making and then were accepted by the Commission without notice to Scott County and without giving Scott County an opportunity to respond. The time period allowed for Comments and Replies in a rule making proceedings are clearly defined in Section 1.415 and acceptance of Mortenson's late Comments in the form of a "supplement" is contrary to the Rules.

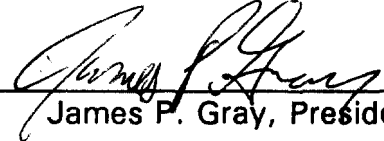
Scott County needs the opportunity to show the Commission that Mortenson lacked candor in his filings, and manipulated the rulemaking process to delay the allocation of Channel 241A to Stamping Ground. Accordingly, Scott County Broadcasting, Inc. respectfully requests the Commission accept the attached Opposition to Supplement and Statement for the Record.

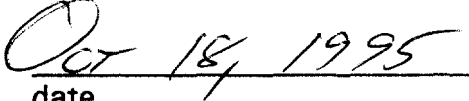
Pursuant to Section 1.52 of the Rules, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Scott County Broadcasting, Inc.  
10 Trinity Place  
Fort Thomas, Ky. 41075

By:

  
James P. Gray, President

  
date

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

|  |   |                     |
|--|---|---------------------|
| In re:                                   | ) |                     |
|  | ) | MM Docket No. 95-28 |
| Amendment of Section 73.202(b)           | ) |                     |
| of the Commission's Rules,               | ) | RM-8593             |
| Table of Allotments, FM                  | ) |                     |
| Broadcast Station (Stamping Ground, Ky.) | ) |                     |

To: The Commission

OPPOSITION TO SUPPLEMENT and STATEMENT FOR THE RECORD

Scott County Broadcasting, Inc. ("Scott County") hereby submits this statement for the Record and Opposition to a Supplement to Counterproposal filed by Mortenson Broadcasting Company of Kentucky, L.L.C. ("Mortenson") in MM Docket 95-28. Scott County, licensee of WKYI (FM) 256A in Stamping Ground, Kentucky, hereby requests the Commission grant Channel 241A to Stamping Ground, and to set aside Mortenson's counterproposal for 240A in Nicholasville because:

1. Mortenson's counterproposal was in violation of Section 73.207 and 1.401(e) when filed and should have been returned.
2. Mortenson's reply comments were untimely filed three and one half months late.
3. Mortenson failed to express continuing interest in its counterproposal both during the original reply period which ended May 10, 1995 , and in the additional reply period issued specifically for Mortenson's counterproposal on September 13, 1995. Mortenson did not file

anything in either comment period.

4. Mortenson lacked candor concerning its filing and its intentions in applying for Channel 240A at Nicholasville, which it seemingly filed to interpose delay, and has wasted Commission time and resources and caused damage to Scott County's continued operation of WKYI (FM) in Stamping Ground, Kentucky.

Scott County operates WKYI (FM) licensed to Stamping Ground, Kentucky, which is first and only local service to this community and is the only commercial FM station that has its transmitter located within Scott County. On January 19, 1995, Scott County filed a rulemaking petition requesting substitution of Channel 241A for Channel 256A in Stamping Ground. This proposal was in compliance with the Commission's minimum distance separation requirements of Section 73.207 and did not have a conflict with any other allocation. The merit of this change was to allow WKYI to provide better service to the underserved Scott County by reducing interference to and from short spaced station WHKO, Dayton, Ohio and to increase WKYI's power from 3.0 kilowatts to 6.0 kilowatts. The commission readily agreed with this concept as it indicated in the Notice of Proposed Rulemaking released March 3, 1995.

Mortenson's counterproposal, submitted during the Comment period of Docket 95-28, requested Channel 240A be placed in Nicholasville, Ky. as new fourth local service. The proposal was short spaced 86 kilometers to the licensed site of WRSL, Channel 240A, Stanford, Kentucky, a clear violation of 73.207(a) which states "The Commission will not accept petitions to amend the Table of Allotments,.....unless transmitter sites meet the minimum distance separation requirements of this section..." The Commission should have dismissed Mortenson's counterproposal pursuant to Section 1.401(e) which states "Petitions which are moot, (or) premature.....which do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner". In

spite of this clear violation of the rules, which was pointed out by Scott County in its Reply comments, Mortenson's request was not dismissed but allowed to stand. Mortenson then failed to express a continued interest in Channel 240A for Nicholasville during the Reply comment period, filing no reply whatsoever. Although Mortenson's proposal was in violation of Section 73.207, the request was neither dismissed, or placed on Public Notice.

On August 30, 1995, three and one half months after the close of the Reply comment date May 10, 1995, Mortenson filed comments in which it stated that an application for license was filed by WRSB, Stanford, Ky. for operation on Channel 242C3 explaining to the Commission that *„there is no longer any reason to delay accepting MBC's (Mortenson's) proposal and placing it on Public Notice to elicit reply comments.”* The Commission staff accepted Mortenson's comments and, on September 13, 1995 placed Mortenson's proposal on a fifteen day Public Notice (#2098) of Petitions for Rulemaking Filed. Mortenson failed to reply with a statement of continued interest, and in fact, Mortenson did not reply in any way to the Notice.

Regarding its failure to make reply comments in a timely fashion, Mortenson stated in its Supplement Comments that it *“...delayed responding (in Reply Comments) to Scott County because MBC was aware that the Stanford facility was being constructed.”* This statement along with Mortenson's purposeful action of not filing any Reply Comments is an admission by Mortenson that it planned to delay comments in the Notice of Proposed Rulemaking. Mortenson lacked candor with regard to its knowledge of the Stanford facility and its intention to delay comments. Evidently Mortenson felt confident it could file late comments and still get what it wished. The result of Mortenson's late filed comments, and the Commission's acceptance of them, is to further delay the proceeding and Scott County's requested frequency change.

Apparently, then, either Mortenson filed the counterproposal for Channel 240A at Nicholasville, Ky. to delay Scott's proposal, or Mortenson is contriving a larger plan yet to be revealed for which it has circumvented normal Commission procedures. Could it be that Mortenson will miraculously discover an alternate use for Channel 240A or an adjacent channel precluded by its filing in Nicholasville and then 'allow' the deletion of Channel 240A at Nicholasville? This lack of candor and manipulation of the Commission's process will not be ignored or go unchallenged by Scott County.


It is incomprehensible to Scott County why the Commission has given Mortenson special consideration by allowing his flawed proposal to stand. Mortenson's original counterproposal was in violation of Section 73.207 when filed on April 24, 1995, and should have been dismissed by the Commission at that time. Mortenson's Supplement should not have been considered by the Commission because it was filed three and a half months late. Mortenson failed to provide continued interest in his original counterproposal in the two available reply periods and Mortenson lacked candor regarding his filings for Channel 240A at Nicholasville by his own admissions. All of this has caused a waste of the time and resources of the Commission and delayed the public benefit of decreased interference and increased service created by the grant of Scott County's proposal.

Therefore, Scott County Broadcasting, Inc. hereby requests that the Commission grant Scott County's request to substitute Channel 241A for Channel 256A at Stamping Ground, Kentucky, and set aside Mortenson's counterproposal for Channel 240A at Nicholasville, Kentucky, since it was in conflict with the Rules as demonstrated above and due to the petitioner's continued lack of interest.

Pursuant to Section 1.52 of the Rules, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Scott County Broadcasting, Inc.  
10 Trinity Place  
Fort Thomas, Ky. 41075

By:   
James P. Gray, President

OCT 18, 1995  
date



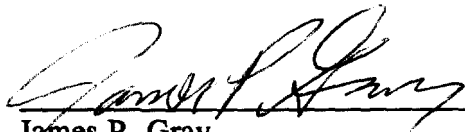
## **CERTIFICATE OF SERVICE**

I, James P. Gray, do hereby certify that I have this 18th day of October, 1995, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing **MOTION TO ACCEPT & OPPOSITION TO SUPPLEMENT and STATEMENT FOR THE RECORD** to the following:

Ms. Sharon P. McDonald  
Allocations Branch- - Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W. - - Room 569  
Washington, D.C. 20554

Mark N. Lipp  
Mullin, Rhyne, Emmons and Topel, P.C.  
1225 Connecticut Avenue, N.W. -- Suite 300  
Washington, D.C. 20036-2604

Ms. Rachael Chong, Commissioner  
Mr. William Caton, Acting Secretary  
Mr. Roy Stewart, Chief Mass Media Bureau  
Mr. Douglas Webbink, Chief, Policy and rules Division, Mass Media Bureau  
c/o Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

  
\_\_\_\_\_  
James P. Gray  
40 Trinity Place  
Fort Thomas, Ky. 41075